

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

CHRISTOPHER S. MILAM,

Plaintiff,

v.

CIVIL ACTION NO. 2:16-6002

NANCY A. BERRYHILL,
Acting Commissioner of the
Social Security Administration,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendant's Partial Motion to Dismiss (ECF No. 14) pursuant to Federal Rule 12(b)(6). This case involves a challenge to the Social Security Administration's redetermination process found in 42 U.S.C. § 405(u). A full discussion of Plaintiff's background and disability can be found in this Court's previous order denying a preliminary injunction. *See Mem. Op. & Order*, ECF No. 25, at 1-2.

Plaintiff's challenges to the redetermination process replicate similar legal challenges brought to this Court in *Robertson v. Berryhill*, Civ. No. 3:16-3846 (S.D.W. Va.) and in *Dillon v. Berryhill*, Civ. No. 2:16-4330 (S.D.W. Va.). The Court granted the Acting Commissioner's motions to dismiss in both of these cases. *See Robertson*, ECF No. 40; *Dillon*, ECF No. 13. As these opinions cover all of Plaintiff's challenges, the Court finds it unnecessary to repeat the analysis here. Therefore, the Court incorporates the opinions from *Robertson* and *Dillon* herein and directs the parties to those opinions for a full analysis on why Plaintiff's procedural challenges fail to state a claim.

Accordingly, the Court **GRANTS** Defendant's Partial Motion to Dismiss (ECF No. 14). As the Defendant interpreted the complaint to include a substantive challenge regarding the Administrative Law Judge's final determination, the Court will allow this claim to continue. *See Def.'s Partial Mot. to Dismiss*, ECF No. 14, at 4 n.4. Whether the decision to terminate Plaintiff's benefits was based on substantial evidence, therefore, remains pending. The Court **DIRECTS** the Clerk to refer the remaining claim to the magistrate judge pursuant to this Court's Standing Order (ECF No. 3).

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: March 28, 2017



ROBERT C. CHAMBERS, CHIEF JUDGE